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6 **Attorneys for Defendant INDEMNITY INSURANCE  
 COMPANY OF NORTH AMERICA**

7 **UNITED STATES DISTRICT COURT**

8 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

9  
 10 THE REGENTS OF THE UNIVERSITY OF  
 CALIFORNIA,

11 Plaintiff,

12 vs.

13 INDEMNITY INSURANCE COMPANY OF  
 NORTH AMERICA, DOES 1 TO 20,

14 Defendant.

15 Case No. C 07-2721 EDL

16 **NOTICE OF MOTION AND MOTION TO  
 TRANSFER FOR CONVENIENCE (28  
 U.S.C. § 1404(a)); MEMORANDUM OF  
 POINTS AND AUTHORITIES;  
 DECLARATION OF MICHAEL C.  
 PHILLIPS IN SUPPORT THEREOF**

17 DATE: July 17, 2007  
 TIME: 9:00 a.m.  
 PLACE: Courtroom E

18 Trial Date: None

19 **TO PLAINTIFF AND ITS ATTORNEY OF RECORD:**

20 PLEASE TAKE NOTICE that on July 17, 2007, at 9:00 a.m., or as soon thereafter as the  
 21 matter may be heard in Courtroom E of the above-entitled Court located at 450 Golden Gate  
 22 Avenue, 15th Floor, San Francisco, California 94102, defendant INDEMNITY INSURANCE  
 23 COMPANY OF NORTH AMERICA ("INDEMNITY") will and hereby does move to transfer this  
 24 action to the Central District of California, Southern Division, on the grounds that a change of  
 25 venue is necessary for the convenience of the parties and witnesses.

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1 This motion is brought pursuant to 28 U.S.C. Section 1404(a). This motion is based on  
2 this Notice of Motion, the attached Memorandum of Points and Authorities and Declaration of  
3 Michael C. Phillips, and upon the papers, records and pleadings on file herein.

4

5 DATED: June 4, 2007

ANDERSON, McPHARLIN & CONNERS LLP

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7 By: /s/ Michael C. Phillips APC  
8 Michael C. Phillips APC  
9 Rose Martinez-Genzon  
10 Attorneys for Defendant INDEMNITY INSURANCE  
11 COMPANY OF NORTH AMERICA

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

This action arises out of an alleged breach of contract by defendant INDEMNITY INSURANCE COMPANY OF NORTH AMERICA ("INDEMNITY") for its failure to pay insurance benefits to plaintiff THE REGENTS OF THE UNIVERSITY OF CALIFORNIA for damage sustained to the plaintiff's construction project located in Irvine, California.

The action was originally filed in state court. On May 23, 2007, INDEMNITY filed a notice of removal based on diversity jurisdiction. INDEMNITY now respectfully requests an order transferring this action to the Central District of California, Southern Division pursuant to 28 U.S.C. Section 1404(a).

According to the complaint, the plaintiff is a corporation duly organized under the Constitution and laws of the State of California with its principal place of business in Oakland, California. INDEMNITY is neither incorporated in California, nor does it have its principal place of business in California. The construction project that is the subject of this litigation, however, is located in Irvine, California. Moreover, to the best of INDEMNITY'S knowledge, all witnesses who have knowledge of the damage to the construction project and of the investigation and issues related to insurance coverage are located in or near Irvine, California. Hence, aside from the plaintiff having its principal place of business in Oakland, California, there is absolutely no other connection between the facts and circumstances giving rise to this litigation and the instant court. For these reasons, this motion to transfer is appropriate.

**II. VENUE OF THIS ACTION SHOULD BE CHANGED TO THE CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

23 28 U.S.C. 1404(a) provides:

24 For the convenience of parties and witnesses, in the interest of  
25 justice, a district court may transfer any civil action to any other  
district or division where it might have been brought.

26 Pursuant to this statute, whether an action should be transferred is a two-step process. The  
27 transferring court must first determine whether the action "might have been brought" in the  
28 transferee court and then whether the transfer is in the interest of justice and for the convenience

1 of the parties and witnesses.

2 The plaintiff originally filed this action in the Superior Court of California for the County  
3 of Alameda. On May 23, 2007, INDEMNITY filed a notice of removal of action based on  
4 diversity of citizenship. The order assigning the action to the Northern District of California,  
5 Western Division was filed on May 23, 2007. 28 U.S.C. 1331(a) provides that a civil action  
6 founded on diversity of citizenship may be brought in "a judicial district in which a substantial  
7 part of the events or omissions giving rise to the claim occurred, or a substantial part of property  
8 that is the subject of the action is situated...."

9 The plaintiff alleges in its complaint that INDEMNITY improperly denied a claim for  
10 damages sustained to a construction project located at the University of California Irvine in Irvine,  
11 California. All events related to the damage to the construction project, including the geological  
12 investigation and subsequent denial of the claim, occurred in Irvine, California. This action,  
13 therefore, could have been brought before the United States District Court for the Central District  
14 of California, Southern Division.

15 The second of the two-step process, whether the convenience of the parties and witnesses  
16 will be served by a transfer, also compels the granting of this motion. Virtually all of the  
17 witnesses and the documentary evidence to be used in the litigation are located in or near Irvine,  
18 California. The geologist hired by INDEMNITY is located in Anaheim, California, as is the  
19 insurance adjustor and the persons who have knowledge of the alleged damages. (See attached  
20 Declaration of Michael Phillips.) Aside from the plaintiff allegedly having its principal place of  
21 business in Oakland, there is absolutely no connection to this court where the case is currently  
22 venued.

23 For these reasons, there is simply no question that the action should be transferred to the  
24 Central District of California, Southern Division so that the parties and witnesses are not  
25 inconvenienced by the time and expense that will be incurred traveling to and from Irvine to San  
26 Francisco. Moreover, the interests of justice will be served by transferring the action as a transfer  
27 will prevent the waste of time and unnecessary litigation expense.

28 / / /

1 **III. CONCLUSION**

2 For the reasons stated above, INDEMNITY respectfully requests that this motion be  
3 granted and that the venue of this action be transferred to the Central District of California,  
4 Southern Division.

5 DATED: June 4, 2007

ANDERSON, McPHARLIN & CONNERS LLP

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7 By: /s/ Michael C. Phillips APC

8 Michael C. Phillips APC

9 Rosa Martinez-Genzon

10 Attorneys for Defendant  
11 INDEMNITY INSURANCE COMPANY OF NORTH  
12 AMERICA

13 **ANDERSON, McPHARLIN & CONNERS LLP**

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## DECLARATION OF MICHAEL C. PHILLIPS

I, Michael C. Phillips, hereby declare as follows:

1. I am an attorney-at-law duly licensed to practice before all courts in the State of California, including the court in which this action is currently venued, and am a partner with the law firm of Anderson, McPharlin & Conners LLP, attorneys of record for defendant INDEMNITY INSURANCE COMPANY OF NORTH AMERICAN ("INDEMNITY") in the above-entitled action.

2. I was the attorney involved in providing advice to INDEMNITY when the plaintiff's claim was first submitted to INDEMNITY. Accordingly, I have personal knowledge of the matters set forth herein, and if called upon as a witness to testify thereto, I could and would competently do so.

3. INDEMNITY is incorporated in the State of Pennsylvania and has its principal place of business in Philadelphia, Pennsylvania. INDEMNITY is engaged in the business of insurance.

4. The instant action arises out of an alleged breach of contract by INDEMNITY for failure to pay insurance benefits to plaintiff THE REGENTS OF THE UNIVERSITY OF CALIFORNIA for damage sustained to plaintiff's construction project located at the University of California Irvine in Irvine, California. All events related to the damage of the construction project occurred in Irvine, California and the claim was investigated in Irvine, California. To the best of my knowledge at this time, the following are the names and addresses of all persons known to be percipient witnesses to any of the matters raised in the pleadings in this action, and the matters upon which they would likely testify:

a. Richard Henderson, GMAC Insurance Adjuster  
17401 Irvine Boulevard, Suite J, Tustin, CA 92780  
Will testify regarding the denial of the claim.

b. Mark M. McCarty, AMEC Earth & Environmental Inc.  
1290 North Hancock St., Suite 102, Anaheim, CA 92807  
Will testify regarding the investigation of the construction

1 causation of damage.

2 c. Douglas R. Bell, AMEC Earth & Environmental Inc.

3 1290 North Hancock St., Suite 102, Anaheim, CA 92807

4 Will testify regarding the investigation of the construction project and  
5 causation of damage.

6 d. Rick Coulon, Risk Manager, UCI

7 250 Public Services Bldg., Irvine, CA 92697

8 Will testify regarding the construction project and information provided to  
9 the insurance adjuster.

10 e. Jim Henderson, Chief Inspector, UCI

11 5201 California St., Suite 250, Irvine, CA 92697

12 Will testify regarding the construction project and information provided to  
13 the insurance adjuster.

14 f. Mary Opel, Acting Director, UCI

15 5201 California St., Suite 250, Irvine, CA 92697

16 Will testify regarding the construction project and information provided to  
17 the insurance adjuster.

18 g. Mike Nelson, Project Manager, UCI

19 5201 California St., Suite 250, Irvine, CA 92697

20 Will testify regarding the construction project and information provided to  
21 the insurance adjuster.

22 5. I believe that most of the documentary evidence is located in the district to which  
23 transfer is sought.

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6. As can be seen from the locations of the witnesses listed in paragraph 4 above, the interests of justice and the convenience of the parties and witnesses would be served by transferring this action to the Central District of California, Southern Division.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 4<sup>th</sup> day of June 2007, at Los Angeles, California.

/s/ Michael C. Phillips APC  
Michael C. Phillips PAC

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